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**IN THE
COURT OF APPEALS OF INDIANA**

JESSICA BOWLING,

Appellant-Defendant,

VS.

STATE OF INDIANA.

Appellee-Plaintiff.

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No. 35A02-0612-CR-1121

APPEAL FROM THE HUNTINGTON CIRCUIT COURT
The Honorable Thomas M. Hakes, Judge
Cause No. 35C01-0510-FC-75

March 1, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Jessica Bowling appeals her advisory sentence of four years for Trafficking with an Inmate as a Class C felony. Specifically, she contends that the trial court erred in not finding any mitigators. Following *McMahon v. State*, 856 N.E.2d 743 (Ind. Ct. App. 2006), we review sentences under a single standard: inappropriateness. Concluding that the trial court did not abuse its discretion in not finding any mitigators and that Bowling's sentence is not otherwise inappropriate, we affirm.

Facts and Procedural History

On October 18, 2005, the State charged Bowling with Trafficking with an Inmate as a Class C felony.¹ Thereafter, Bowling pled guilty as charged. She also pled guilty to Burglary as a Class B felony under Cause No. 35C01-0510-FB-75.² In exchange, the State agreed to dismiss a residential entry charge under Cause No. 35C01-0510-FB-75, to cap the burglary sentence at ten years and the trafficking sentence at four years, and that the sentences in both cause numbers would run concurrently.³ The facts relevant to the trafficking charge, as recited by the State and agreed to by Bowling at the guilty plea hearing, are as follows:

[D]uring the month of July, 2005 the defendant was an inmate at the Huntington County Jail working as a trustee at Andrews Elementary School. While at the school people left marijuana near the grounds of the school and the defendant picked up the marijuana which was wrapped in

¹ Ind. Code § 35-44-3-9(b), (d).

² Bowling is also appealing her sentence for burglary under Court of Appeals Cause No. 35A04-0612-CR-715.

³ We note that Bowling did not include a copy of her plea agreement in her appendix. Nevertheless, the trial court recited the terms of Bowling's plea agreement at the sentencing hearing.

plastic bags. The defendant placed the marijuana inside of her vagina and brought the marijuana into the Huntington County Jail. The defendant then gave some of the marijuana to a couple of female inmates.

Tr. p. 51-52. In imposing Bowling's sentence, the trial court did not identify any aggravators or mitigators. Rather, the court noted that it had considered "the pre-sentence report, the statements and the plea agreement. Having done so, I order the advisory sentence of ten years in cause number 0510-FB-75 and the advisory sentence of four years in cause number 0510-FC-72. The time in these cases shall be served concurrent to one another." *Id.* at 61. Bowling now appeals her sentence for trafficking with an inmate.

Discussion and Decision

On appeal, Bowling contends that the trial court erred in not finding any mitigators. In 2005, the Indiana General Assembly amended Indiana Code § 35-38-1-7.1(d) (2006), which now provides that a trial court may impose any sentence that is authorized by statute and permissible under the Indiana Constitution "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Under this new sentencing scheme, a defendant may no longer bring a claim regarding aggravators and mitigators that is separate and independent from a claim that her sentence is inappropriate under Indiana Appellate Rule 7(B). *See McMahon v. State*, 856 N.E.2d 743, 748-49 (Ind. Ct. App. 2006). Rather, we review sentences under a single standard: inappropriateness. *Id.* at 752. The burden is on the defendant to persuade the appellate court that her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). In assessing the appropriateness of sentences under Indiana Appellate

Rule 7(B), we will review the aggravating and mitigating circumstances identified, or not identified, by the trial court. *McMahon*, 856 N.E.2d at 748; *Gibson v. State*, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). In doing so, we apply an abuse of discretion standard. *Samaniego-Hernandez v. State*, 839 N.E.2d 798, 805 (Ind. Ct. App. 2005).

Here, Bowling pled guilty to trafficking with an inmate as a Class C felony. Indiana Code § 35-50-2-6 provides, in pertinent part: “A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years.” The trial court sentenced Bowling to the advisory term of four years.

First, Bowling argues that the trial court failed to identify as a mitigator the undue hardship that her incarceration would create for her child. The record discloses that Bowling had two daughters, one of whom was deceased. According to the Presentence Investigation Report, Bowling was unemployed, and Bowling’s mother was supporting Bowling’s daughter. Thus, Bowling’s claim that incarceration would cause undue hardship for her child is highly disputable. In addition, jail is always a hardship on dependents, and Bowling fails to explain how her advisory four-year sentence is more of a hardship on her child than would be the minimum two-year sentence. *Vazquez v. State*, 839 N.E.2d 1229, 1234 (Ind. Ct. App. 2005), *trans. denied*. As such, the trial court did not abuse its discretion in failing to identify this as a mitigator.

Next, Bowling argues that the trial court should have considered her remorse as a mitigator. At the sentencing hearing, Bowling testified as follows:

I know that you probably hear a lot of the same thing when people come up here and apologize for what they did. But I am sorry. As far as the

trafficking goes I realize now, too late, that the consequences far outweigh the satisfaction of being able to smoke a [marijuana] cigarette while I was in jail. I just didn't realize at the time really what I was doing I guess.

Tr. p. 58. The trial court heard this testimony but declined to find Bowling's alleged remorse as a mitigator. The Indiana Supreme Court has stated that the trial court's determination regarding remorse is similar to a determination of credibility. *Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002). In the absence of evidence of some impermissible consideration by the trial court, we accept its determination of credibility. *Id.* We find no impermissible considerations. The trial court did not abuse its discretion in failing to consider this mitigator.

Finally, Bowling argues that the trial court should have considered her guilty plea as a mitigator. "A guilty plea demonstrates a defendant's acceptance of responsibility for the crime and extends a benefit to the State and to the victim or the victim's family by avoiding a full-blown trial." *Francis v. State*, 817 N.E.2d 235, 237-38 (Ind. 2004). "[A] defendant who willingly enters a plea of guilty has extended a substantial benefit to the [S]tate and deserves to have a substantial benefit extended to him in return." *Id.* at 237 (quoting *Scheckel v. State*, 655 N.E.2d 506, 511 (Ind. 1995)). However, a trial court does not abuse its discretion by not finding a guilty plea as a mitigating factor when a defendant receives a substantial benefit for pleading guilty. *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999); *see also Francis*, 817 N.E.2d at 238 n.3.

Here, the record reveals that in exchange for Bowling's plea of guilty to trafficking with an inmate, the State dismissed a residential entry charge under another cause number, agreed to cap her sentences for trafficking and burglary at the advisory

levels, and agreed that the sentences would run concurrently. Because Bowling received a substantial benefit from her decision to plead guilty, the trial court did not abuse its discretion by failing to give her guilty plea any mitigating weight.

II. Appropriateness of Bowling's Sentence

Having found that the trial court did not abuse its discretion in failing to find any mitigators, we must now determine whether Bowling's sentence is otherwise inappropriate in light of the nature of her offense and her character. *McMahon*, 856 N.E.2d at 748; *see also* Ind. Appellate Rule 7(B). Regarding the nature of Bowling's offense, Bowling, an inmate at the Huntington County Jail, was working in a position of trust at the jail and was allowed to work offsite in an elementary school. While working at the school, someone brought marijuana to Bowling, which she then hid in her vagina. Bowling brought the marijuana back to the jail and smoked it with some of the inmates. Bowling's offense is egregious in that she abused her position as a jail trustee and had marijuana delivered to an elementary school. As to Bowling's character, the record shows that Bowling, who was twenty-three years old at the time of sentencing, had four misdemeanor convictions and two probation violations, had pled guilty to burglary as a Class B felony, and had a neglect of a dependent as a Class A felony charge pending against her.⁴ Even Bowling's trial attorney requested a sentence of four years. *See* Tr. p. 59. Given the nature of her offense and her character, Bowling's advisory sentence of four years is not inappropriate.

⁴ According to the Offender Search on the Indiana Department of Correction website, Bowling was convicted of Neglect of a Dependent as a Class A felony and sentenced to forty years on September 19, 2006.

Affirmed.

BAILEY, J., and BARNES, J., concur.